

**RAYMOND C. REDD**  
Claimant

**SEK-CAP, INC.**  
Respondent

**CIGNA**  
Insurance Carrier

# KANSAS WORKERS COMPENSATION FUND

## ORDER

## APPEARANCES

## RECORD

## STIPULATIONS

## ISSUES

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the whole evidentiary record file herein and in addition, the stipulations of the parties, the Appeals Board makes the following findings of fact and conclusions of law:

The Appeals Board finds that the decision of the Administrative Law Judge denying claimant benefits as a result of claimant's failure to provide timely written claim for compensation as is required by K.S.A. 44-520a should be affirmed.

Claimant alleged that while standing on a ladder working in respondent's weatherization program, he suffered injury to his back, experiencing back pain and leg problems prior to being laid off by respondent in August 1991. Claimant claims to have provided to respondent's supervisor, Stephen Lohr, an off-duty slip from Dr. Gellender prior to his layoff. Respondent denies claimant suffered injury and further denies being presented a copy of this off-duty slip. Claimant asserts this medical off-duty slip would constitute written claim under K.S.A. 44-520a. Claimant further propounds that respondent's referral of claimant to Dr. Hood for an independent medical examination on October 19, 1993 extended the statute of limitations for the submitting of written claim.

K.S.A. 44-501 and K.S.A. 44-508(g) make it claimant's burden to establish claimant's right to an award of compensation by proving the various conditions upon which the claimant's right depends by a preponderance of the credible evidence. See also Box v. Cessna Aircraft Co., 236 Kan. 237, 689 P.2d 871 (1984). The Appeals Board acknowledges that case law in Kansas holds that written claim need not take any particular form so long as its purpose is to make claim for workers compensation benefits. Ours v. Lackey, 213 Kan. 72, 515 P.2d 1071 (1973). It is the intention of the parties that determines what constitutes a written claim. Fitzwater v. Boeing Airplane Co., 181 Kan. 158, 309 P.2d, 681 (1957). Whether an instrument is a written claim for compensation and whether such claim is timely filed is a question of fact. Ours v. Lackey, *supra* at 78.

In this instance claimant was unable to produce the off-duty note purportedly created by Dr. Gellender. The testimony of Dr. Gellender was not taken to ascertain whether this note was ever actually created. The respondent's employees who testified unanimously denied knowledge of claimant's alleged injury and further denied knowledge of any written claim being submitted to respondent prior to claimant's attorney letter of November 17, 1992. K.S.A. 44-520a requires written claim be submitted within two hundred (200) days of the accident or two hundred (200) days of the last payment of compensation. If, as in this case, the employer fails to file an accident report with the Director after obtaining knowledge of the accident, the written claim time limitation can be extended to one year from the date of accident, suspension of payment of disability or the date of the last medical treatment authorized by the employer. See K.S.A. 44-557(a)(c). Here, respondent denies being provided the off-duty slip, denies knowledge of an accident, and denies providing any authorized medical treatment to claimant as a result of these alleged injuries. As claimant's written claim fell beyond both the two hundred (200) day statute of limitations of K.S.A. 44-520a and beyond the one year statute of limitations of K.S.A. 44-557, the Appeals Board finds claimant has failed, regardless of which statutory path is pursued, in providing written claim to respondent in a timely fashion.

Claimant further contends the respondent's referral of claimant to Dr. Hood for an independent medical examination extends the statute of limitations under K.S.A. 44-520a for submitting timely written claim. The time for filing written claim will not be revived, once it is passed by voluntary payment of compensation by respondent. Graham v. Pomeroy, 143 Kan. 974, 57 P.2d 19 (1936). Furthermore, a medical examination to evaluate a disability does not constitute medical treatment. The statutory time limitations for filing written claim would not be tolled under these circumstances. Thompson v. Swenson Construction Co., 158 Kan. 49, 145 P.2d 166 (1944).

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Award of Administrative Law Judge John D. Clark dated August 21, 1995, shall be, and is,

affirmed, and claimant is denied award against respondent Sek-Cap, Inc., and CIGNA, for injuries alleged to have occurred while claimant was in respondent's employ through August 1991.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of February 1996.

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BOARD MEMBER

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c: William L. Phalen, Pittsburg, Kansas  
Douglas Hobbs, Wichita, Kansas  
John D. Clark, Administrative Law Judge  
Philip S. Harness, Director